

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5218 of 1991

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KESHAVLAL M PATEL

SARPANCH

Versus

SECRETARY

Appearance:

MR PK JANI for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED for Respondent No. 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 21/07/2000

ORAL JUDGEMENT

#. By this Special Civil Application under Article 226 of the Constitution of India, the petitioner, who is Sarpanch of Grampanchayat, Panchot, seeks a direction to

be issued to the authorities of the State of Gujarat in its Revenue and Animal Husbandry Department, to retransfer the land bearing Survey No. 1591 of Village Panchot, Taluka and District Mehsana admeasuring 8 acres to the Grampanchayat.

#. The facts leading to the petition are as under:

The land mentioned above is part of a larger area recorded in the Revenue Records as grazing land for the village. The said grazing land, as claimed by the Panchayat, was vested in the Panchayat in accordance with the provisions contained in Section 96(1) of the Gujarat Panchayats Act, 1961. The Director of Animal Husbandry of the State of Gujarat approached the Panchayat in the year 1986, with a proposal to open a Veterinary Poly Clinic in Panchot village. Considering the said proposal to be one in the interest of the livestock of the village, the Panchayat passed a Resolution on 22-3-1986, agreeing to transfer the above mentioned land to the Veterinary Department of the State for opening Veterinary Poly Clinic. On the basis of the proposal of the Director of Animal Husbandry and the Resolution of the Panchayat, the Collector of Mehsana passed an order on 31-3-1987 transferring the land described above to the Veterinary Department of the State, on specific condition, that the land allotted has to be utilised for the purpose mentioned in the order for opening of a Veterinary Poly Clinic. The land in question, therefore, stood transferred to the Veterinary Department of the State under a formal document, Annexure D, dated 23-4-1987. As has been stated in the Application, the site of the Veterinary Poly Clinic was changed and as a result thereof, the land which came to be transferred to the Revenue Department on the Resolution of the Panchayat, is no longer required for establishing a Veterinary Poly Clinic.

#. It is on the above facts that the petitioner, who is the Sarpanch of the Grampanchayat, Panchot, has approached this Court seeking directions for retransfer of the land to the Grampanchayat.

#. Learned counsel appearing for the petitioner took me through the various documents and conditions of transfer under which the land was made available to the Veterinary Department of the State. It is argued that since there is a breach of the condition of transfer of the land, the Panchayat is entitled to seek directions for return of the land or its retransfer.

#. Although, this is a petition of the year 1991, on behalf of the State of Gujarat and its two Departments of Revenue and Animal Husbandry, no affidavit-in-reply has been filed. Learned A.G.P., even in the absence of any formal reply, has made efforts to oppose the petition stating that the land which was reserved for grazing and was within the administration of the Panchayat, having stood transferred to the Veterinary Department of the State, on the alleged breach of condition contained in the transfer document, the Grampanchayat can claim no right of retransfer of the land.

#. I have considered the submissions made by the counsel appearing for the parties. The order of the Collector dated 31-3-1987 and the consequent document of transfer which are in Gujarati have been explained to me. One of the conditions on which the land was made available to the Veterinary Department is that the land shall be utilised for the purpose for which it is granted and as and when there is a requirement of the land, it will have to be returned to the Revenue Department.

#. The above mentioned condition in the order of the Collector, by which the land was allotted to the Veterinary Department, does not prima facie create any right of retransfer of the land to the Grampanchayat.

#. My attention has also been invited to the relevant provisions contained in subsections (1) and (4) of Section 96 of the Gujarat Panchayats Act, 1961 which was in force at the relevant time. The relevant part of said subsections (1) and (4) of Section 96 are reproduced as under:

"96(1) For the purpose of this Act, the State Government may subject to such conditions and restrictions as it may think fit to impose, vest in a Panchayat open sites, waste, vacant or grazing lands or public roads, streets, bridges, ditches, dikes, and fences, wells, river-beds, tanks, streams, lakes, nallas, canals, water-courses, trees or any other property in the gram or nagar, as the case may be, vesting in the Government.

(2) xx xx xx xx

(3) xx xx xx xx

(4) Where any open site or waste, vacant or grazing land vesting in Government has been vested by Government in a Panchayat whether before or after the commencement of this Act, then it shall be lawful for the State Government

to resume at any time site or land, if it is required by it for any public purpose."

#. A bare reading of the above provisions goes to show that amongst others lands to be used for public purpose and for village community the Government is empowered to vest grazing lands in the Panchayat. Under Subsections (1) and (4) of Section 96, any open site or waste, vacant or grazing land vesting in Government and which has been vested by the Government in a Panchayat can be resumed by the Government for any public purpose.

##. From the facts that have been mentioned above, it appears that the land in question which were part of the grazing lands stood vested in the Panchayat under Section 96(1), and was then stood allotted to the Veterinary Department with the consent and by Resolution of the Grampanchayat. The transfer was, however, made by the Revenue Department of the State to the Veterinary Department. It was, therefore, not a case of transfer of land vested in the Panchayat directly to the Veterinary Department of the State. It appears to be a case that the land was resumed by the Government under subsection (4) of Section 96 in its Revenue Department and was allotted to Veterinary Department for Veterinary Poly Clinic.

##. In view of the above legal position, merely on the ground that the land allotted has not so far been utilised for the purpose for which it is allotted, Grampanchayat cannot claim retransfer of the land to it.

##. Learned Counsel appearing for the Panchayat, however, very fairly submits that since part of the grazing land was made available by the Panchayat for allotment to the Veterinary Department and as the Veterinary Department does not require it now for Veterinary Poly Clinic, the State should revest the land again in the Panchayat. Such a representation or request has to be made to the State Government as the power of revesting the land, which has already been resumed, is with the State Government and that power has to be exercised under subsections (1) of Section 96 by considering several relevant factors.

##. As a result of the discussion aforesaid, the Special Civil Application is rejected.

It is, however, observed that if the Grampanchayat makes a representation or request to the State Government for revesting of the said land in the

Panchayat, the State Government shall consider such representation in accordance with law.

Since the petition has been disposed of, interim relief shall stand vacated. Rule is discharged with no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

[devu]